THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 393 Of 2001
Old F.A.F.O. No.130 of 1985

The U.P. Government

… Appellant.

Versus

Smt. Laxmi Devi, widow of Sri Jagdish Chandra,
Resident ofVillage Chitai, Patti Khasparja,,
District Almora.

… Respondent.

Sri Nand Prasad, learned Standing Counsel for the appellant.

Date June 08, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) has been preferred against the judgment and award dated 17-11-1986 passed by the Motor Accident Claims Tribunal Almora (***in short the Tribunal***) in M.A.C. Petition No. 46 of 1983, Smt. Laxmi Devi and 2 others Vs. U.P. Government, whereby the learned Tribunal awarded compensation of Rs. 1,00,000/- in favour of the claimants recoverable from the Opposite Party State of U.P. Aggrieved, the State of U.P. has come up in appeal.

Relevant facts giving rise to this appeal are that Jagdish Chandra, aged 32 years and earning Rs. 900/- from shop-keeping business, who was husband of the claimant no.1 Laxmi Devi, lost his life as a result of injuries suffered by him in a vehicular accident on 5,.4.1983 involving motor-jeep No. UTD-5300. The deceased was survived by his wife and two minor children as his dependents. The vehicle in question belonged to Medical Department of U.P. Government. The deceased was being

taken from Almora to Delhi by the said ambulance. The vehicle met with an accident near Chamaria within Police Station Bhowali, hence compensation of Rs. One Lac was claimed for the death of the deceased. The claim petition was resisted by the State of U.P.-appellant. Deceased was admitted to be a village shop-keeper and the claim amount of Rs. One Lac was excessive. It was asserted that the deceased had already sustained head injuries in another accident at different place date and time. The accident occurred due to mechanical failure of the brakes. The State of U.P. had mentioned details of the accident in which the deceased suffered injuries on 4.4.83 while he was in a state of intoxication.

The learned Tribunal on the pleadings of the parties framed as many as eight issues in the case, recorded the evidence of the parties and after hearing the learned counsel for both the parties, came to the conclusion that it was admitted to the State-appellant that the vehicle in question was hired by the deceased for being carried to Delhi and that due to failure of brakes the accident occurred. The version of the claimants was supported by the testimony of P.W.3, Padam Singh Sirahi, who was travelling as attendant of the deceased and had given ocular account of the entire accident. The death of the deceased due to motor accident was established. The learned Tribunal after scrutiny of the oral testimony of witnesses examined by the claimants as well as defence witnesses in detail found that the driver of the vehicle was rash and negligent at the time of accident and the accident was not the result of mechanical failure of brakes. Ultimately, after discussing the entire evidence on record, the learned Tribunal by a detailed judgment of 26 pages, decreed the claim petition for compensation of Rs. One lac in favour of the claimants against the State of U.P., which gave rise to this appeal.

The main grounds to assail the impugned judgment and award taken by the appellant and required to be examined in

this appeal are firstly, whether the deceased died as a result of the alleged motor accident and secondly whether the accident was caused due to the negligence on the part of the driver of the vehicle and the findings recorded by the learned Tribunal are based on evidence on record.

I have heard learned Standing Counsel Sri Nand Prasad on behalf of the State-appellant and perused the material on record. None appeared for the respondent despite sufficient service.

It is pertinent to mention that the learned Tribunal framed separate Issues on each point of controversy. There is specific Issue No.7 framed on the issue whether the deceased Jagdish Chandra died as a result of injuries suffered by him involving the ambulance belonging to the Medical Department on which he was being carried to Delhi from Almora or on account of injuries already sustained by him on a previous date.

The admitted case of the parties was that the deceased was a shop-keeper in the village and he was admitted in the District Hospital Almora. It is also admitted to the appellant that he was being carried by the vehicle in question. It is also admitted that an accident occurred at the place, but according to the State-appellant it took place due to sudden mechanical failure.

At the outset, it may be mentioned that since it was admitted to the appellant that the deceased had been suffering from head injuries etc. and they took up the case that the occurrence had taken place one day prior, i.e. on 4.4.1983, which was the ultimate result to cause death of the deceased. It was incumbent to have proved their stand because in such a case the liability shifts to establish the story taken up by the other party. But no such evidence had been led by the appellant, which could lead to

unequivocal term that the deceased had died otherwise than what was said by the claimants. The State-appellant has miserably failed to discharge its burden.

One another circumstances which goes against the stand taken up by the appellant before the Tribunal is that there was sudden mechanical failure of the brakes of the ambulance. It is the duty of the owner to keep his vehicle in road worthy conditions. It is a case where the ambulance of the Medical Department was involved in the accident. When according to the appellant the patient was referred for his treatment to Delhi hospital from Almora which is far off place, it was but natural that the vehicle which is only meant for carrying serious patients ought to have been properly maintained and it was the duty of the driver of the ambulance to have taken full caution and vigilance while carrying a patient on hill road like the road between Almora to Haldwani. On this point, the learned Tribunal has made observations in para no. 19 to 20 of the impugned judgment to the effect that ***"it is important to note that the respondent could have produced inspection report of Igada Work Shop or some other technical expert of the U.P.Roadways to show the condition of the ambulance-jeep immediately after the accident and especially whether on account of the said motor-vehicle accident, any part of the said motor-vehicle and especially the rear portion had received any damage or the glass window panes had been broken. It is important to note that as Jadgish Chandra was lying on a strature in the ambulance-jeep, the impact of the said motor-vehicle with any obstruction would have produced a reaction or a back-force with the result that Jagdish Chandra would have slipped out of the broken glass panes and fell on the ground receiving further head injuries as a result of which he died at the spot."*** The learned Tribunal further observed that ***"the respondent has failed to produce any medical evidence to show the actual state of condition of Jagdish Chandra when he was discharged***

from the Hospital or when he started from Almora on the said ambulance-jeep. It was easy for the respondent to have produced the said medical evidence and to prove that Jagdish Chandra was in such a critical condition that in the ordinary course of nature he would not have survived for a few hours, or that his life was in eminent danger if he was taken in the abbulance-jeep from Almora to Haldwani on a hilly motor road. Curiously enough, Dr. Ashok Sharma , D.W.1, has admitted in para 5 that when he had examined Jagdish Chandra at 8 A.M. on 5.4.83 at the District Hospital, Almora, he had not noted and mentioned his actual condition in the bed-head-ticket, Ex.A1. Thus, the respondent has to thank itself for not producing readily available medical evidence in its possession to rebut the case of the claimants and to prove\ before the Court that in all probability Jagdish Chandra had actually died before the said motor accident." I have read out the entire evidence on record. There is plethora of evidence which disproves the stand taken by the State appellant in this case. Having considered the facts and circumstances of the case, there is nothing to doubt that the deceased had died due to the injury suffered by him while being carried from Almora to Delhi in the ambulance owned by the appellant. There is no need to examine anything more, because the learned Standing Counsel could not point out any infirmity or illegality in the findings recorded by the learned Tribunal on the points on which the award of the Tribunal has been challenged in appeal. It would suffice to mention that in the ordinary course, the driver who is deputed to drive the vehicle in the hills is required to driver the vehicle with care and caution and here, the case of negligence on the part of a driver carrying a patient in ambulance is the subject matter. In any view of the matter, I am unable to take a slightest different view that there was no negligence on the part of the driver of the ambulance. The entire evidence is squarely discussed by the learned Tribunal touching even the remote consideration on the matters involved in the case. In the cases under the Act, strict proof of the fact is not

required and prima facie it had to be seen that there was any negligence on the part of the driver or not.

In view of the discussion and reasons aforesaid, the appeal preferred by the State is devoid of merit and is liable to be dismissed outright.

No other point was urged or argued before me in this appeal.

Accordingly, the appeal is hereby dismissed. Costs easy.

(B.S. Verma, J.)

RCP